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SUPREME COURT, U.S.
FILED
OCT 3 1960
JAMES F. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 253

PAUL K. ROBERTS, ... Petitioner

vs.

W. L. LOVE, JAMES MOSELEY, O. K. LITTLEFIELD, JAMES WHITE AND MARION WHITE, A PARTNERSHIP, D B A THE EAGLE PUBLISHING COMPANY AND ROBERT L. NEWTON, ... Respondents

REPLY BRIEF OF PETITIONER

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REPLY BRIEF OF PETITIONER

THE FEDERAL QUESTION WAS TIMELY AND PROPERLY MADE

The Petitioner in the case at bar within 17 days after March 28, 1960, filed in the Supreme Court of Arkansas his Petition For Rehearing as allowed by Rule 20, Rules of the Supreme Court of Arkansas. In this Petition For Rehearing the Petitioner alleged "The action of the Supreme Court of Arkansas sustaining the demurrer denied appel-

lant his rights secured to him under the provisions of Amendents No. 5, 7 and 14 of the Constitution of the United States." On May 2, 1960, the Supreme Court of Arkansas denied the Petition For Rehearing. This constituted a timely and proper presentation of the constitutional question to the Supreme Court of Arkansas and this consfitutional question is now properly before this court.

The case of *Saunders v. Shaw and the Board of Drainage Commissioners of the Bayou Terre-Aux-Boefs Drainage District*, et al., 244 U. S. 317, is a case very similar to the case at bar. In this *Saunders* case the lower court had decided the case without hearing any evidence and the Petitioner had alleged constitutional questions of due process in his Petition For Rehearing.

This court granted the Petition For Certiorari and had the following to say about cases like the one at bar: "But when the act complained of is the act of the Supreme Court, done unexpectedly at the end of the proceeding, when plaintiff in error no longer had any right to add to the record, it would leave a serious gap in the remedy for infraction of constitutional rights if the party aggrieved in such a way could not come here. The defendant was not bound to contemplate a decision of the case before his evidence was heard and therefore was not bound to ask a ruling or take other precautions in advance. The denial of rights given by the Fourteenth Amendment need not be by legislation. *Home Telephone and Telegraph Company v. Los Angeles*, 271 U. S. 278. It appears that shortly after the Supreme Court had declined to entertain the petition for rehearing the plaintiff in error brought the claim of constitutional right to the attention of the Chief

Justice of the state by his assignment of errors. We do not see what more he could have done."

In the case at bar the Petitioner made certain allegations of fact in his complaint which could have been proven or refuted only by the taking of testimony. *It is submitted that the Petitioner's rights guaranteed to him by the constitution of the United States had not been denied when he filed his complaint in the Circuit Court of Bradley County, Arkansas.* Petitioner had every right to believe that the Circuit Court of Bradley County would follow the law. Likewise, he had every right to believe that the Supreme Court of Arkansas would safeguard his constitutional rights. When these two courts summarily dismissed his complaint by means of demurrer, then his constitutional rights were invaded, and that is when Petitioner called this fact to the attention of the Supreme Court of Arkansas.

The case of *Arrowsmith v. Harmoning, Administratrix and Others*, 118 U. S. 194, is a case in which the Petitioner set up the following assignment of error on Petition For Rehearing before the Supreme Court of the State of Ohio:

"3rd. That by affirming the judgment of the Court of Common Pleas by said District Court, this plaintiff in error was deprived of his right of trial by jury, contrary to the provisions of the Constitution of this State, and deprived of his property without due process of law, contrary to the provisions of the Constitution of the United States."

The court in deciding this case, went on to say "This is the first time, so far as the record discloses, that even the semblance of a Federal right was set up in this case,

and even here it is not easy to see on what ground it could be claimed that Arrowsmith had been deprived of his property in violation of the Constitution of the United States. It is for this reason, perhaps, that the Supreme Court (of Ohio) while affirming the judgment of the District Court, took no notice of this assignment of error in its opinion. The decision, however, necessarily involved a denial of the right which was claimed in this way, and thus we probably have technical jurisdiction. For this reason the motion to dismiss must be denied, but the question on which our jurisdiction depends was so manifestly decided right, that the case ought not to be held for further argument."

It can be seen from the above cited cases that if a State Supreme Court passes upon the federal question raised for the first time even on Petition For Rehearing, that this constitutes a timely presentation of the federal question.

To the same effect is the case of *Raley v. Ohio*, 360 U. S. 423. In granting the Petition For Certiorari in the *Raley* case, this court said, "There can be no question as to the proper presentation of a federal claim when the highest state court passes upon it. See *Manhatten Life Insurance Company v. Cohen*, 234 U. S. 123, 124. We think this sufficient to satisfy the statutory requirement sought to be vindicated in this court to be one claimed below. 28 USC Sec. 1257 (3)."

The case at bar is closely akin to the case of *Brown v. Western Railway of Alabama*, 338 U. S. 294. In the *Brown* case, as in the case at bar, the court had under consideration whether or not the lower court should have sustained a demurrer to a complaint. In the Brown case, the plaintiff filed a complaint in which he stated a cause of

action. A demurrer interposed by defendant was sustained by the trial court. The Supreme Court sustained the trial court.

In granting certiorari out of this court it was said, "A long series of cases previously decided, from which we see no reason to depart, makes it our duty to construe the allegations of this complaint in order to determine whether the petitioner has been denied a right of trial granted him by Congress. * * * We hold that the allegations of the complaint do set forth a cause of action which should not have been dismissed. * * * Certainly these allegations are sufficient to permit introduction of evidence from which a jury might infer that petitioner's injuries were due to the railroad's negligence in failing to supply a reasonably safe place to work.

Here the Georgia court has decided as a matter of law that no inference of railroad negligence could be drawn from the facts alleged in this case. Rather the court itself has drawn from the pleadings the reverse inference that the sole proximate cause of petitioner's injury was his own negligence."

Upon trial of this case the evidence offered may or may not support inferences of negligence . We simply hold that under the facts alleged it was error to dismiss the complaint and that petitioner should be allowed to try his case."

The Supreme Court of Arkansas has decided as a matter of law that this vicious, false, slanted, distorted article which was clearly written to cause racial tension and animosity toward the Petitioner was true and could not have damaged the reputation of this Petitioner. The Supreme Court of Arkansas has stated in its opinion "In view of

public sentiment and the probable outraged feeling of the community toward a crime of this nature, we can readily understand appellant's sensitivity toward the article, we dare say that numerous instances have arisen wherein people have been embarassed by seeing their name in print, though no harmful act had been committed, but under our system of government and its democratic prosesses, a free press is assured". The court is saying in this sentence that even though this Petitioner's reputation might have been damaged, when he had done no wrong, yet the importance of the free press is such that no liability should arise even though the press has libelled him.

All this Petitioner has ever asked of the Circuit Court of Bradley County or the Supreme Court of Arkansas is that he be allowed to present his case to a jury. The Bradley County Circuit Court and the Arkansas Supreme Court have gone to extreme lengths to see that he never has that opportunity. As long as a situation exists in this United States of America where a citizen of this country cannot present his case to the proper adjudicating tribunal just so long will that citizen be deprived of his constitutional rights as set forth in our constitution.

The Circuit Court of Bradley County and the Supreme Court of Arkansas have held ~~that~~ as a matter of law that when an accused person is committed to the hospital for mental observation that this action is a "legal technicality." This is patently incorrect because an insane person is not placed in a hospital for treatment because of a technicality but because it has always been a common law substantive right that those who were insane were not legally responsible for their actions.

The Supreme Court of Arkansas states that as a mat-

ter of law there could not possibly be anything libellous in an article stating that the circuit judge "was forced to send A. C. Duncan" to the State Hospital in spite of the fact that Section 43-1305 of Arkansas Statutes, 1947 Edition, specifically states that upon motion suggesting insanity "whereupon the court shall direct the examination (of accused) by two (2) reputable and disinterested physicians."

A. C. Duncan is a Negro, and at the time Petitioner was appointed to represent him feeling was running very high against him. The respondent newspaper was not content to publish a restrained, factual account of the hearing but rather chose the sensational, tabloid type account which is the basis of this suit. Whether or not this sensational, false, distorted newspaper article damaged the reputation of this Petitioner is a question of fact which can only be decided by a jury and until this petitioner is given an opportunity to submit his case to a jury of his peers just so long will his constitutional rights guaranteed to him under the provisions of Amendments No. 5, 7 and 14 have been violated.

Unless this court grants this Petition For Certiorai this Petitioner will be without redemdy.

Respectfully submitted,

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